

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RONNIE HILTON,

Plaintiff,

v.

BEDFORD PAVING, LLC, HUDSON PAVING
AND CONSTRUCTION, INC., CENTRAL
ROADWAYS, INC., CARRIAGE ENTERPRISES,
INC., GREG SCHIMPF, ANTHONY PILATO and
STEPHEN CAROZZA, Individually and In their
Official Capacities,

Defendants.

ORDER

08-CV-6552CJS

By order dated December 9, 2009, the above-captioned matter has been referred to the undersigned for the supervision of pretrial discovery and the hearing and disposition of all non-dispositive motions, pursuant to 28 U.S.C. §§ 636(b)(1)(A) and (B). (Docket # 9).

This action was filed on December 5, 2008 by *pro se* plaintiff Ronnie Hilton (“Hilton”). (Docket # 1). On December 29, 2008, United States District Judge Richard J. Arcara granted Hilton’s motion for leave to proceed *in forma pauperis*. (Docket # 4). On April 3, 2009, counsel appeared on behalf of Hilton. (Docket # 5). Currently pending before this Court is defendants’ motion to rescind Hilton’s *in forma pauperis* status on the basis that an attorney has appeared on Hilton’s behalf. (Docket # 8).

The court may authorize the commencement of a lawsuit without prepayment of fees upon a person’s showing that the person is “unable to pay such fees or give security therefor.” 28 U.S.C. § 1915(a). Hilton has submitted an updated *in forma pauperis* affidavit

indicating that his financial condition has not changed since he originally filed the motion. (Docket # 14). In addition, during a telephone conference with this Court, Hilton's counsel represented that Hilton has not compensated him for his services. Thus, this Court declines to disturb the District Court's order on the basis that Hilton has secured counsel because there has been no showing that Hilton no longer financially qualifies to proceed *in forma pauperis*.

Defendants argue that Local Rule of Civil Procedure 5.2(c) provides that only *pro se* litigants may apply for *in forma pauperis* status. (Docket # 8). A review of 28 U.S.C. § 1915 reveals that the statute does not preclude represented parties from proceeding *in forma pauperis*. This Court declines to interpret the local rule in a more restrictive manner than the authorizing statute.

For the foregoing reasons, defendants' motion to rescind Hilton's *in forma pauperis* status (**Docket # 8**) is **DENIED**.

IT IS SO ORDERED.

s/Marian W. Payson

MARIAN W. PAYSON
United States Magistrate Judge

Dated: Rochester, New York
February 2, 2010